UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 11/15/2005	EXAMINER
Siemens Corporation	VU, TUAN A
Intellectual Property Department	

186 Wood Avenue South	ART UNIT / PAPER NUMBER
Iselin, NJ 08830	2193

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *8/24/05.*

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20050824</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

1.   This action is responsive to the application filed 8/24/2005.

Claims 1-6, 15, 17-23, 34, 36, 39-41, 43-51 have been amended and claims 1-52 have

been re-submitted for examination.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 36-38 are rejected under 35 U.S.C. 101 because the claims are directed to a non-

statutory subject matter.

> The Federal Circuit has recently applied the practical application test in determining whether the claimed subject matter is statutory under 35 U.S.C. § 101. The practical application test requires that a " useful, concrete, and tangible result" be accomplished. An "abstract idea" when practically applied is eligible for a patent. As a consequence, an invention, which is eligible for patenting under 35 U.S.C. § 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The test for practical application is thus to determine whether the claimed invention produces a "useful, concrete and tangible result".

As per claim 36, the claim only recites a storage medium having stored thereon a

representation of an automation control program as a markup language version thereof, such

computer program adapted for use by a programmable logic controller, and created using a

graphical program language. The claim does not recite any implementation or action step so as

to execute or actually use what is recited as control program or markup language thereof. As

recited, the claim content can be analogized to a stored file in which some program code to

control data are written in some form, such file storing followed by no action that would enable

one skill in the art to be reasonably taught that some concrete or useful result is generated

therefrom. Even though the above claimed program code is recited as being adapted for use in

some controller, the fact that it is only adapted for such use cannot translate into a actual action

being taken so to yield any form of result; notwithstanding the *intended use* connotation caused

by the phrase 'adapted for use'. The claimed invention must convey a useful, concrete and

tangible result to one of ordinary skill as it relates to the practical application, not a mere listing

of non-functional elements for an intended use. As recited, the claim only provides descriptive

elements without specifying actions performed by or using those elements; hence fails to provide

steps leading to a useful, concrete, and tangible result as required by the practical application

test. Hence, the claim only amounts to an abstract idea for failing the requirement of the

Practical Application test, hence is rejected for leading to a non-statutory subject matter.

Claims 37-38 are also rejected for failing to remedy to the deficiencies of the base claim.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

5.   Claims 1-8, 10-12, 14-26, 28-30, 32-45, and 47-52 are rejected under 35 U.S.C. 102(e) as

being anticipated by Dole, USPN: 6,634,008 (hereinafter Dole).

As per claim 1, Dole discloses a method for representing industrial automation computer

program code created using a graphical programming language (e.g. col. 8, lines 22-32), the

method comprising:

identifying an internal representation of an industrial automation computer program (e.g.

files and libraries, file defining methodologies... executable methodologies - col. 7, lines 14-49;

Verilog file – col. 8, lines 25-32; col. 8, line 63 to col. 9, line 19; col. 10, lines 32-56; col. 13, line

43 to col. 14, line 15; *netlist* – col. 14, lines 42-47; step *503* – Fig. 8; Fig. 11-12; *job steps, chain*

job – col. 16, lines 5-9; col. 16, lines 53-55 – Note: all files generated from the EDA tool reads

on internal representation of the automation program), the internal representation created via a

graphical programming language (e.g. col. 8, lines 22-32; col. 5, lines 11-21; step 503 – Fig. 8) ;

and

converting the internal representation to a markup language version of the code

industrial automation computer program (e.g. Fig 10; col. 16, lines 10-47; Fig. 13).

Note: The limitation as to the use of automation program in a programmable logic

controller (PLC) is not treated as having any weight because as a whole the limitations of the

claim do not seem to be affected by or dependent on the fact that the use for the computer

program is for a PLC or not; or by any other industrial controlling application like that by Dole's

integrated Circuits development and testing framework.

As per claims 2-3, Dole discloses storage of the markup language version of the

industrial automation computer program to be stored in computer storage device (e.g. *XML files*

– col. 16, line 21-67) for transmission and being displayed for editing discloses inherent storage

for transport across the internet (e.g. Fig. 5).

As per claims 4 and 5, Dole discloses converting the markup-formatted code of the

industrial automation computer program to the internal representation in computer memory as a

corresponding graphical programming language version the industrial automation computer

program (e.g. step *527* – Fig. 13; Fig. 17-23 – Note: executing markup file via file

decompression to restore *DAG or chip/block or Netlist* based synthesis files defining a circuitry

job chain reads on corresponding graphical programming language).

As per claims 6-7, Dole discloses Fig. 5 and XML (e.g. col. 16, line 21-67).

As per claims 8 and 10-11, Dole discloses *step-by-step flows* and *schematic* for a circuit

design being documented (e.g. col. 5, lines 11-16; col. 12, lines 5-48); hence has disclosed a

graphical language comprising flowchart language and sequential flow chart (*DAG* - col. 16,

lines 52-55; col. 17, lines 22-27; Fig. 23) and block diagram language (e.g. step 405-407 – Fig.

9; col. 12, lines 42-55; Fig. 8, Fig. 19, 28 – Note: *model* and *physical layout* of IC in a circuit as

well as UI manipulating of block flow – see col. 5, lines 11-32 - reads on block diagram

graphical type of language).

As per claims 12 and 14-15, Dole discloses modeling (e.g. *synthesis tool, behavioral*

model, schematic - col. 12, lines 5-48; col. 15, lines 20-47; *Flow/steps 1119* -Fig. 10; Fig. 23);

hence has disclosed graphical language comprising a flowchart, block diagram, and function

diagram (re claims 8, 10-11) being converted into markup language and decompressed

therefrom (re claims 4-5).

As per claim 16, Dole discloses an tool with editor command (e.g. col. 13, lines 22-44;

Fig. 4, 10, 12).

As per claim 17, Dole discloses executing circuit of design block from the XML

language in corresponding graphical language version of the industrial automation computer

program (e.g. step *527* – Fig. 13; Fig. 17-23 – Note: executing markup file via file

decompression to restore *DAG or chip/block or Netlist* based synthesis files defining a circuitry

job chain reads on corresponding graphical programming language).

As per claim 18, see Dole's browser use (Fig. 5).

As per claim 19, this is a computer product with computer-readable medium (see Dole:

col. 28, lines 6-8) for performing the same steps limitations recited respectively in claim 1; hence

is rejected with the corresponding rejections as set forth in claim 1, including the rationale to

address the industrial automation computer program code limitation.

As per claims 20-23, refer to the rejections of claims 2, 4, 3, 5, respectively.

As per claims 25-26, and 28, refer to claims 7-8, and 10, respectively.

As per claims 30, 32, refer to claims 12, 15, respectively.

As per claims 34-35, refer to claims 17 and 16, respectively.

As per claim 36, Dole discloses computer-readable storage medium having stored

thereon a representation of industrial automation program code as markup language version of

the industrial automation computer program (e.g. col. 16, lines 10-47; Fig. 13), the program code

for use in a industrial application field (Note: The limitation as to adapting the automation

program for use in a programmable logic controller (PLC) is not treated as having any weight

because of the intended use (*adapted for use in*) as mentioned above – see claim 1).

As per claim 37, see claim 7.

As per claim 38, Dole implicitly discloses coupling to remote computer system (e.g. Fig.

5).

As per claim 39, Dole discloses a computer program product for permitting a user to

create industrial automation computer programs (e.g. col. 8, lines 22-32), the product comprising

a computer-readable storage medium having a computer program code on it, the code

comprising:

industrial automation graphical programming language code, an editor adapted to permit

the user to create industrial automation computer program using graphical elements (e.g.

synthesis tool, behavioral model, schematic - col. 12, lines 5-48; *DAG* - col. 16, lines 52-55; col.

17, lines 22-27; Fig. 23; step 405-407 – Fig. 9; col. 12, lines 42-55),

the industrial automation graphical program being stored in an internal representation

during execution (*files and libraries* - col. 7, lines 14-49; *Verilog file* – col. 8, lines 25-32; col. 8,

line 63 to col. 9, line 19; col. 10, lines 32-56; col. 13, line 43 to col. 14, line 15; *netlist* – col. 14,

lines 42-47; step *503* – Fig. 8; Fig. 11-12; *job steps, chain job* – col. 16, lines 5-9; col. 16, lines

53-55); and

program code for converting the industrial automation computer program thus stored in

the internal representation to a markup language version of the industrial automation computer

program (e.g. col. 7, lines 26-42; Fig 10; col. 16, lines 10-47; Fig. 13).

As per claim 40, Dole discloses converting industrial automation computer program

from the markup language format to the internal representation (see rejection of claim 4).

As per claim 41, Dole discloses a method for communicating the logical structure of

software industrial automation control data in order to permit a plurality of application

developers to create applications relating to the data, the method comprising:

creating a schema defining a content model for markup language version of an industrial

automation computer program system (e.g. col. 7, lines 26-42; DTD – col. 16, lines 10-20; Fig.

13; col. 16, line 65 to col. 17, line 2) converted from a graphical language version of the

industrial automation computer program (*synthesis tool, behavioral model, schematic* - col. 12,

lines 5-48; *DAG* - col. 16, lines 52-55; col. 17, lines 22-27; Fig. 23; step 405-407 – Fig. 9; col.

12, lines 42-55); and

posting the schema for access over the network by the application developers (e.g. Fig. 5;

Fig. 13).

Note: The limitation as to the use of automation program in a programmable logic

controller (PLC) is not treated as having any weight because as a whole the limitations of the

claim do not seem to be affected by or dependent on the fact that the use for the computer

program is for a PLC or not; or by any other industrial controlling application like that by Dole's

integrated Circuits development and testing framework.

As per claims 42 and 43, refer to claim 7-8, respectively.

As per claim 44, Dole discloses a method for providing software industrial automation

computer program from a system of developers coupled in a network (Fig. 5, 13), the system

comprising:

accessing a markup language version of the industrial automation computer program

(e.g. Fig. 10; col. 16, line 21-67), the markup language version of the computer program

converted from a representation created using a graphical programming language (e.g. col. 7,

lines 26-42; DTD – col. 16, lines 10-20 – Note: using browser technologies to create CGI-script

or XML DTD file reads on using graphical programming language);

transmitting the markup language version of the industrial automation computer

program over the network in connection of a client system address, thereby causing the markup-

version of the industrial automation computer program to be received by the receiving system

(e.g. Fig. 5, Fig. 13, 17-23).

Note: The limitation as to adapting the automation program for use in a programmable

logic controller (PLC) is not treated as having any weight because of the intended use (*adapted*

for use in) as mentioned above – see claim 1.

As per claim 45, Dole discloses client transmitting to the server data relating to the

markup language version of the automation computer program, wherein the server has access to

the modified industrial automation computer program in response thereto, the modified industrial

automation computer program is provided in markup language version (e.g. Fig. 5-6; col. 15, line

58 to col. 16, line 4), and further comprising: transmitting the markup version modified industrial

automation computer program to the client system address to be received by the client (Fig. 5;

Fig. 10 – Note: Fig. 10, steps 1115, 1117 versions to select and posted to developers reads on

modified industrial automation computer program or methodologies version transmitted in

markup language)

As per claims 47 and 48, see Dole (col. 16, line 21-67; Fig. 5, 13).

As per claim 49, this claim includes a variation of claim 44, such variation considered

evident in that a client can be a first or a second client in Dole's HTML communication protocol

and service rendered to requesting developers, and is rejected using the rationale set forth in

claim 44 to address the transmitting of control data based on the network address of the first

client system, because in view of the server/client paradigm (Dole: Fig. 3-5), the markup

language version in received by a first client and possibly a second client.

As per claim 50, this claim includes the same limitation of claim 4 or 40; and is rejected with the rationale used in claim 4 or 40 in conjunction with the rejection as set forth in claim 49; because in a network where markup data is distributed, rendering such data back into internal representation by a first, a second or a third client would be the same.

As per claim 51, Dole discloses a method for industrial automation control applications, comprising:

providing a computer system coupled to a network (e.g. Fig. 5);

configuring a first computer to receive over the network transmissions of data from a plurality of industrial automation developer systems (Fig. 3-5); and

receiving data from a the plurality of industrial automation computer program developer systems, the data comprising an industrial automation computer program in a markup language version (e.g. col. 16, line 21-67; step *527* – Fig. 13; Fig. 17-23), the markup language version of the computer program converted from a representation created using a graphical programming language (e.g. col. 7, lines 26-42; DTD – col. 16, lines 10-20 – Note: using browser technologies to create CGI-script or XML DTD file reads on using graphical programming language).

Note: The limitation as to adapting the automation program for use in a programmable logic controller (PLC) is not treated as having any weight because of the intended use (*adapted for use in*) as mentioned above – see claim 1.

As per claim 52, see claim 7.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 9, 13, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Dole, USPN: 6,634,008, in view of Hoskins et al., USPN: 6,167,406 (hereinafter Hoskins).

As per claim 9, Dole does not teach graphical programming language comprising a

ladder logic, but as evidenced via the teachings by Hoskins, providing a ladder logic to be

implemented for transmission of circuit design and flow control would also have been obvious in

view of the methodologies by Dole to assemble block and execution of the control flow of

components in a circuit design. In a method using a object-oriented modeling tool analogous to

Dole, Hoskins discloses using browser technologies and markup language, e.g. SGML and

activeX, to transport application program development and related representation across

platforms and to facilitate developers builder environment (e.g. col. 11, lines 50-63; col. 12,

lines 47-65) and further discloses a framework to implement automation control using editing

interface to implement a ladder logic in relation to a Programmable Logic Controller (PLC) to

effect the controlling tasks (col. 12, line 66 to col. 13, line 51; Fig. 2-80). It would have been

obvious for one of ordinary skill in the art at the time the invention was made to apply the circuit

synthesis tool and markup conversion as taught by Dole so that ladder logic be also included as

part of the graphical language for synthesis and modeling as taught by Hoskins because task and

flow control oriented of blocks as taught by Dole can also be applied via a ladder logic so crucial

to enable control on the functionality of circuits such as the very useful controller like a PLC as

disclosed by Hoskins should this PLC be one of Dole's target design.

As per claim 13, this claim incorporates the rejection of claim 7; and would also includes the rationale to the 'ladder logic' limitation obvious in view of the rejection of claim 9.

As per claims 27 and 31, these claims correspond to claims 9 and 13 respectively, hence are rejected using the same rationale as set forth therein, respectively.

8.   Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dole, USPN: 6,634,008, as applied to claim 45.

As per claim 46, Dole discloses modeling to support a business application programming scheme using a modeling tool (re claim 44) but fails to disclose using mail message for communications. Official notice is taken that in an enterprise wherein multiple users are connected via the enterprise network services such that network communication and data distribution help fulfill the enterprise business applications, the use electronic mail to communicate data or update information was a well-known concept at the time the invention was made. The providing of electronic mail to Dole's system so as to enable multiple developers to communicate with the common framework to retrieve markup-formatted control data would have been obvious in light of the benefits related to such type of communications as suggested by the well-known concept from above.

Response to Arguments

9.   Applicant's arguments filed 8/24/2005 have been fully considered but they are not persuasive. Following are the corresponding Examiner's rebut in regard thereto.

Rejection 35 USC §101:

(A)   Applicant has submitted that amendments have been made to claim 36 so to make the invention a statutory subject matter (Appl. Rmrks, pg. 12-pg. 13) and proferred that 'adapted for

use' has met the criteria of patentable subject matter. With the intended use deficiency created

by the use of 'adapted for use' as set forth above, such amendment does remedy a non-statutory

type of deficiency; and the rejection under 35 USC 101 has pointed out why claim 36 does not

amount to making the claimed invention statutory, i.e. lacking actual and concrete step actions

using descriptive elements or making usage of stored descriptive material to accomplish a result,

such result being required to be concrete, tangible and useful in the computer art, as per the

Practical Application Test.

Rejection 35 USC §102:

(B)   Applicant has submitted that Dole fails to teach or suggest 'identifying an internal ... the

industrial automation computer program adapted for use by a programmable logic controller ...

via a graphical programming language' (for claims 1, 19, 36, 39, 41, 44 and 51 – see Appl.

Rmrks, pg. 23 to pg. 25, top). The rejections as set forth in the USC 101 and in the 102 rejection

has pointed out why the language use such as 'adapted for use' will not have any weight with

respect to the rest of the claim. Hence this limitation as to the *programmable logic controller* is

treated as a mere intended use; thus would be treated as though it is equivalent to any controller

usage such as a framework with pluralities of methodologies by Dole for developing, automating

builds and testing components for implementing circuit designs.

Rejection 35 USC §103:

(C)   Applicant has submitted that Hoskins recites that HTML has proven to be inadequate and

in light of cited references propounding on the differences between Java and Markup language,

Hoskins teaches away from using a markup language (Appl. Rmrks, pg. 26-28). The rejection

has been construed in accordance with the teachings by Hoskins in the context that Markup

language is still the main language to transport other code applications or executable like Java or

ActiveX. It is correct that while Active X (or Java) might not be markup language per se,

ActiveX when combined with browser pages would still be helpful in enabling Hoskins or many

analogous application framework environments to perform the purported endeavors or

distributed methods that, as exploited in Hoskins' approach, are founded on combining markup

technologies and the latest enhancements provided via OLE, Java programs, or ActiveX. The

motivation as to use browser language platform to transport specifications or code snippets --as

embedded/tagged objects --so to achieve distributed design or development of hardware circuitry

has been set forth in the rejection. For one skill in the art, it would be incorrect to perceive that

Hoskins for taking advantage of additional embedded ActiveX objects (written in a non-Markup

language) to enhance the incorporating of needed data within browser pages for a specific

purpose would teach away from the use of markup language; especially when browser or markup

technology was well-known (at the time the invention was made and thus examplified by

Hoskins) and designed to embed not only text, program snippets – Javacript, CGI -- or video

content, programmatic container pointing to other structure, markup content or code executable.

Therefore, the argument denouncing the 'teach away' by Hoskins's use of Java/ActiveX for

embedding objects within browser pages would be un-justified or un-convincing. The fact that

Hoskins mentions about some inadequacy of markup language does not translate directly to the

point where Hoskins would embed data in form of container other than browser pages, i.e. there

is no teaching in Hoskins that dictates that the use ActiveX and Java automatically signifies that

the use markup technology would be discarded. Besides, the rejection is purported to bring the

ladder logic limitation into the teachings so to render it obvious; and for this the Applicant fail to

provide reasons as to why the combination as set forth in the rejection would be improper. In

response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(D)   Applicant has submitted that Dole is not directed in analogous art with the Programmable

Logic controller of the invention (Appl. Rmrks, pg. 29-pg. 30, top). The PLC limitation has been

viewed as having no weight because as claimed the limitation does not enforce any strict

dependency of the subject matter recited in the rest of the claim with respect thereto, notably

when it is construed within the context of the phrase 'adapted for use by'. This issue has been

addressed above.

(E)   Applicant has submitted that there is no motivation to combine (Appl. Rmrks, pg. 30,

bottom to pg. 31, top). As set forth above, the PLC limitation has not been a weight to consider

for patentability or anticipation; and the rejection has been based on the facts that industry

automation can be circuit design/testing as by Dole and that a hardware circuit being targeted in

Dole's automation application can be a PLC. And as long as the other limitations recited in the

claim are fulfilled through the appropriate citing of parts by Dole, the PLC limitation would

remain a feature without patentable weight mainly because of the above-mentioned intended use

language. The argument is hence non persuasive for stressing on a limitation which has been

recited as a mere intended use. The rejection has set forth the reason why it would have been

desirable to combine Dole markup transportation of application of data with the framework

approach by Hoskins. In response to applicant's argument that there is no suggestion to combine

the references, the examiner recognizes that obviousness can only be established by combining

or modifying the teachings of the prior art to produce the claimed invention where there is some

teaching, suggestion, or motivation to do so found either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071,

5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

1992). In this case, based on the common endeavor as to implement industrial design as

perceived from the references, the rejection has pointed to the fact that among other industrial

hardware implementations, a ladder logic control would be a form of flow control that a circuit

design by Dole would be useful for so as be able to provide analysis/control of the flow of

operations needed to implement the functionality of a targeted circuitry --one of which can be a

PLC as well as any other form of controller circuitry.

Because Applicant's argument is not persuasive, the rejections will stand as set forth.

Conclusion

10.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Tuan A Vu whose telephone number is (272) 272-3735. The examiner can
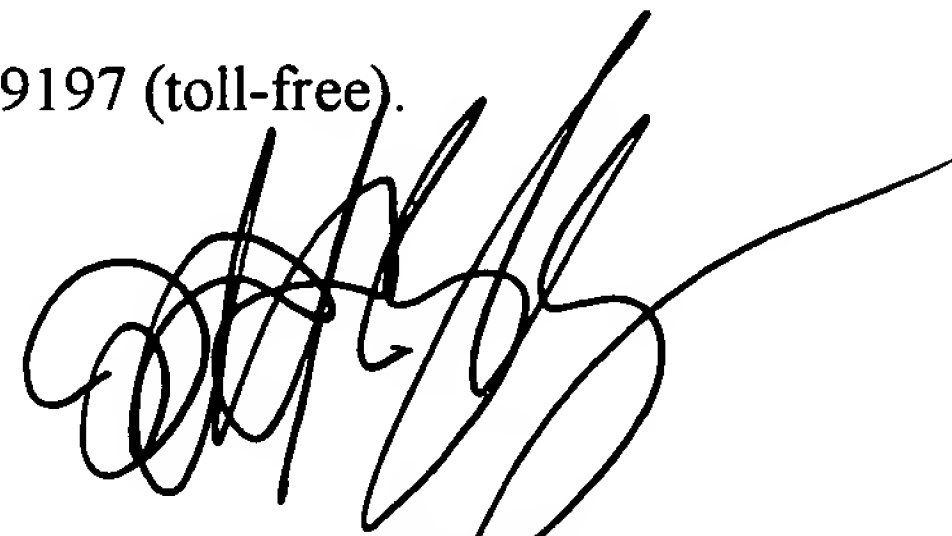
normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kakali Chaki can be reached on (571)272-3719.

The fax phone number for the organization where this application or proceeding is

assigned is (571) 273-3735 (for non-official correspondence – please consult Examiner before

using) or 571-273-8300 (for official correspondence) or redirected to customer service at 571-

272-3609.

Any inquiry of a general nature or relating to the status of this application should be

directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VAT
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TODD INGBERG
PRIMARY EXAMINER